

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 97-0369****Sales and Withholding Tax,  
Responsible Officer Liability  
For Years 1994 through 1996**

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**ISSUE****I. Responsible Officer Liability – Duty to Remit Sales and Withholding Taxes**

**Authority:** Ind. Code § 6-8.1-5-1;  
Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270  
(Ind. 1995).

The taxpayer protests the assessment of sales and withholding tax liability as a responsible officer.

**STATEMENT OF FACTS**

The taxpayer was an officer of an Indiana corporation that provided retail sales and service associated with hair styling. The taxpayer's husband was also an officer of the corporation. Insufficient sales and withholding taxes were remitted to the Department of Revenue for the period October 31, 1994 through August 31, 1996. In March 1995, the taxpayer and her husband divorced. A property settlement agreement was approved by the court in August 1995. The agreement provided that the husband would be responsible for all past, current, and future tax liabilities of the corporation. The Department assessed liability for the taxes to the taxpayer as a responsible officer. No administrative hearing has been held. This Letter of Finding is based entirely on the information and evidence contained in the Department of Revenue file.

**I. Responsible Officer Liability – Duty to Remit Sales and Withholding Taxes****DISCUSSION**

The taxpayer protests the assessment of sales and withholding tax as a responsible officer. Information and evidence submitted by the taxpayer, and contained in the

Department of Revenue file, indicates that the taxpayer was an officer of the corporation. Information in the file also shows that the taxpayer was only minimally involved in the operation of the corporation and did not have responsibility for the financial affairs of the corporation, including retail sales and employee wages. “An individual is personally liable for unpaid sales and withholding taxes if she is an officer, employee, or member of the employer who has a duty to remit the taxes to the Department.” Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995). Although the taxpayer was an officer of the corporation, she was not the officer with the duty to remit taxes to the Department.

“The notice of proposed assessment is *prima facie* evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Ind. Code § 6-8.1-5-1(b). The taxpayer has provided sufficient evidence to prove that she is not a responsible officer and that, therefore, the proposed assessment is wrong.

### **FINDING**

The taxpayer’s protest is sustained.